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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,108	07/11/2006	Ulf Dietrich	WAS0737PUSA	4368
22045 7590 12/21/2009 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075				
EXAMINER				
LEE, DORIS L				
ART UNIT		PAPER NUMBER		
1796				
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12/21/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/551,108

**Applicant(s)**

DIETRICH ET AL.

**Examiner**

Doris L. Lee

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-20, 22-29 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-20, 22-29 and 31-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The new grounds of rejection set forth below are necessitated by applicant's amendment filed on August 25, 2009. In particular, claims 33-35 which are newly presented and the limitations of which were not present in the original claims. Thus, the following action is properly made final.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. All outstanding objections and rejections, except for those maintained below, are withdrawn in light of applicant's amendment filed on August 25, 2009.

#### ***Claim Rejections - 35 USC § 103***

4. **Claims 16-20, 22-23, 25, 27, 29 and 31-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirata et al (EP 0 792 850 A1)**.

The rejection is adequately set forth in paragraph 7 of the Office Action mailed on August 25, 2009 and is incorporated here by reference.

5. **Claims 24 and 26** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirata et al (EP 0 792 850 A1)** in view of **Haerzschel et al (US 6,166,113)**.

The rejection is adequately set forth in paragraph 8 of the Office Action mailed on August 25, 2009 and is incorporated here by reference.

6. **Claim 28** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirata et al (EP 0 792 850 A1)** in view of **Debus et al (US 4,137,088)**.

The rejection is adequately set forth in paragraph 9 of the Office Action mailed on August 25, 2009 and is incorporated here by reference.

7. **Claims 33-35** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirata et al (EP 0 792 850 A1)** in view of **Okazaki (Derwent Abstract of JP 09-249442)**.

The discussion regarding Hirata in paragraph 4 above is incorporated here by reference.

**Regarding claims 33-35**, Hirata teaches that the dispersant is used in Portland cement (page 9, lines 30-35), however fails to teach the addition of a redispersible polymer powder such as an ethylene/vinyl acetate copolymer.

Okazaki teaches the addition of an ethylene-vinyl acetate copolymer to a Portland cement composition (Abstract).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the ethylene-vinyl copolymer of Okazaki with the dispersant taught by Hirata. One would have been motivated to do so in order to receive the expected benefit of improving the bending strength and reduce the shrinkage factor (Okazaki, Abstract). They are combinable because they are both concerned with the same field of endeavor, namely polymers that are incorporated into Portland cement.

### ***Response to Arguments***

8. Applicant's arguments filed August 25, 2009 have been fully considered but they are not persuasive for the reasons set forth below.

9. **Applicant's argument:** Hirata does not mention the problem addressed by the applicants.

**Examiner's response:** *As Hirata teaches all the limitations of the claimed invention, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).*

10. **Applicant's argument:** No example of Hirata employs and copolymerizable comonomer ("d" monomer) and no direction is given to which of these comonomers are preferred.

**Examiner's response:** *The fact that no embodiments of Hirata incorporated comonomer "d" does not mean that Hirata does not teach the limitation cited in the instant claim, it is noted that nonpreferred disclosures can be used. A nonpreferred portion of a reference disclosure is just as significant as the preferred portion in assessing the patentability of claims." See In re Nehrenberg, 280 F.2d 161, 126 USPQ 383 (CCPA 1960).*

11. **Applicant's argument:** Hirata does not teach or suggest using different monomers as the Applicant's required.

**Examiner's response:** *Hirata teaches two different monomers, the first monomer is on page 2, lines 30-37 and the second monomer is on page 2, line 45 to page 3, line 5.*

12. **Applicant's argument:** Hirata does not direct the skilled artisan to the sulfonate or sulfate-functional comonomers which the applicants require.

**Examiner's response:** *The sulfonated monomers are clearly listed on page 7, line 44.*

13. **Applicant's argument:** This is not a question of KSR, the combinations and permutations of these selections are virtually unlimited.

**Examiner's response:** *As Hirata teaches all the desired monomers in its specification. Absent a showing of criticality for the presently claimed monomer combination, it would have been within the bounds of routine experimentation for one of ordinary skill in the art at the time of the invention to use the monomer combination which is both disclosed by Hirata and encompassed within the scope of the present claims and thereby arrive at the claimed invention.*

14. **Applicant's argument:** Applicants note that data presented shows that the rheology of the system is totally different than when the instant invention is used.

**Examiner's response:** *it is noted that comparative example V2 does not encompass all the teachings of Hirata which the examiner uses to reject the claimed invention, most notably, the inclusion of the sulfur containing monomer. Also, it is noted that the data provided in Table 2 does not provide enough information to determine if the invention, as claimed, has the same rheological benefits over the entire range of the claimed invention. For example, the present invention claims (in both monomer c and monomer d) a range of 1 to 300 oxyalkylene repeat units; however, the inventive examples show data only for 45 EO units and 9 PO units. Therefore definitive conclusions of unexpected results over the entire range of the claimed invention can not be determined.*

15. **Applicant's argument:** Applicant's polymers are synthesized in the form of a dispersion in water, not a solution in water. Haerzschel does not teach or suggest that

any polymer other than those he cites can be used as a protective colloid and teaches against the use of emulsifiers. The polymers of Applicants are not protective colloids because they are insoluble in water, they are atomization aids.

**Examiner's response:** *Examiner does not use Hirata's polymers as the protective colloid of Haerzschel. Rather, the polymers of Hirata are used as dispersants which can be added to the composition of Haerzschel as indicated in col. 4, line 58.*

16. **Applicant's argument:** There is no motivation from Hirata to use his plasticizers as spraying aids and no motivation in Haerzschel to use such compounds either.

**Examiner's response:** *The motivation to combine Hirata with Haerzschel is set forth in the rejection above; in order to receive the expected benefit of obtaining a highly flexible building compositions with have good strength and a significantly higher extensibility (col. 2, lines 20-25).*

17. **Applicant's argument:** Haerzschel and Debus are not properly combinable as they teach in opposing directions.

**Examiner's response:** *These two references are 2nd references which are used to teach in specific components of the compositions and as such are combinable because they are concerned with the same field of endeavor, namely plasticizers in cementitious materials.*

### **Conclusion**

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doris L. Lee whose telephone number is (571)270-3872. The examiner can normally be reached on Monday - Thursday 7:30 am to 5 pm and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Doris L Lee/  
Examiner, Art Unit 1796

/Vasu Jagannathan/  
Supervisory Patent Examiner, Art Unit 1796